May 9, 2001

Mr. Joe Jackson
Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842-9960

OR2001-1889

Dear Mr. Jackson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146955.

The Economic Development Office of the City of College Station (the "office") received a request for any and all correspondence with the company, Viatel Incorporated. You state that you have released documents submitted to us as Exhibit C. You claim that Exhibit D is excepted from disclosure pursuant to sections 552.103 and 552.105 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.105 of the Government Code excepts from disclosure information relating to:

(1) the location of real or personal property for a public purpose prior to public announcement of the project; or

(2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

Gov't Code § 552.105. Section 552.105 was designed to protect a governmental body's planning and negotiating position with respect to particular real or personal property transactions. *See* Open Records Decision No. 564 at 2 (1990). This exception protects information relating to the location, appraisals, and purchase price of property only until the transaction is either completed or aborted. *See* Open Records Decision Nos. 357 at 3 (1982),

310 at 2 (1982). The question of whether specific information, if publicly released, would impair a governmental body's planning and negotiation position in regard to particular transactions is a question of fact. Accordingly, when a governmental body has made a good faith determination that the release of information would damage its negotiating position with respect to the acquisition of property, the attorney general in issuing a ruling under section 552.306 of the Government Code will accept that determination, unless the records or other information show the contrary as a matter of law. *See* Open Records Decision No. 564 (1990).

We conclude that you have made a good faith determination that release of the information in Exhibit D would damage the city's negotiating position with respect to the acquisition of the property in question. In addition, our review of the submitted records do not indicate as a matter of law that release of Exhibit D would not damage the city's negotiating position. Based on your representations and our careful review of the submitted exhibit, we believe that you have demonstrated the applicability of section 552.105 of the Government Code. Accordingly, you may withhold Exhibit D from disclosure. Because we base our ruling on section 552.105, we need not address your claim regarding section 552.103 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839.
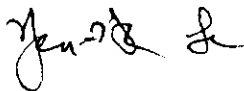
The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/RJB/seg

Ref: ID# 146955

Encl.   Submitted documents

cc: Ms. Jenni Lee
      KBTX-TV
      P.O. Box 3730
      Bryan, Texas 77802
      (w/o enclosures)